

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Schools and Libraries	)	
Universal Service Support Mechanism	)	
	)	
Connect America Fund	)	WC Docket No. 21-31
	)	
Petition for Expedited Declaratory	)	
Ruling and Waivers Allowing the Use	)	
of E-rate Funds for Remote Learning	)	
During the COVID-19 Pandemic	)	

To: Chief, Wireline Competition Bureau

**COMMENTS OF  
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

The Wireless Internet Service Providers Association (“WISPA”)<sup>1</sup> hereby comments on the Wireline Competition Bureau’s *Public Notice*<sup>2</sup> seeking comment on various Petitions for emergency relief filed with the Commission asking for permission to use E-Rate program funds for support of remote learning to off-campus locations during the COVID-19 pandemic.<sup>3</sup> The

---

<sup>1</sup> WISPA is the trade association representing the interests of wireless Internet service providers (“WISPs”) that provide IP-based fixed wireless broadband services to consumers, businesses and anchor institutions across the country. WISPA’s more than 1,000 members include more than 700 WISPs, as well as equipment manufacturers, distributors and other entities committed to providing affordable and competitive fixed broadband services. WISPA estimates that WISPs serve more than six million people, many of whom reside in rural, unserved and underserved areas where wired technologies like FTTH, DSL and cable Internet access services may not be available. During the COVID-19 pandemic, WISPA members are working with local schools to enhance broadband access to meet dramatically increased student and teacher demand for reliable remote learning connectivity.

<sup>2</sup> See *Public Notice*, “Wireline Competition Bureau Seeks Comment on Petitions for Emergency Relief to Allow The Use Of E-Rate Funds To Support Remote Learning During the Covid-19 Pandemic,” WC Docket No. 21-31, DA 21-98 (rel. Feb. 1, 2021) (“*Public Notice*”).

<sup>3</sup> Aleutians East Borough School District (Apr. 3, 2020); State of Colorado (Sept. 2, 2020) (“Colorado Petition”); Florida Department of Management Services (March 12, 2020); Illinois Department of Commerce & Economic Opportunity, Office of Broadband (July 2, 2020); Los Angeles Unified School District (Apr. 3, 2020); Massachusetts Department of Telecommunications and Cable (Nov. 5, 2020); Mississippi Department of Education (March 24, 2020); Navajo Nation (Apr. 3, 2020); State of Nevada

Petitions seek waiver of certain E-rate rules to allow schools to, directly or indirectly, use E-rate support for Internet access to off-campus “remote classroom” locations.

### **Introduction**

The Schools, Health & Libraries Broadband Coalition (“SHLB”), the State of Colorado, and the State of Nevada, among others, have filed various petitions for emergency relief to allow the use of E-rate funds to support remote learning during the COVID-19 pandemic. The petitions seek to allow for the use of E-Rate funded services and equipment beyond the school campus and into student homes for the purposes of remote learning during the pandemic.<sup>4</sup> SHLB also proposes the opening of a new filing window for new or revised requests for additional E-Rate funding for off-campus services and equipment to facilitate remote learning during Funding Years 2020 and 2021.<sup>5</sup> The petitions stem from the new reality faced by many schools that are closed to in-person learning or offering hybrid learning options due to the pandemic. Remote instruction requires students and teachers to be able to access the Internet at sufficient broadband speeds to receive streamed content.

### **Discussion**

According to the Petitions, during the pandemic, education to a significant portion of K-12 students is at risk. As the classroom shifted, almost overnight, from the school to the home in

---

(Aug. 10, 2020) (“Nevada Petition”); San Diego County Office of Education (Apr. 9, 2020); and SHLB, et al. (Jan. 26, 2021) (“SHLB Petition”). These petitions are in addition to those considered in “Wireline Competition Bureau Seeks Comment on Petitions Regarding Off-Campus Use of Existing E-rate Supported Connectivity,” CC Docket No. 02-6, WC Docket No. 10-90 and WC Docket No. 13-184, DA 16-1051 (rel. Sept. 19, 2016), which sought comments on ways to address the “homework gap” in homes without adequate access to broadband communications (collectively, “Petitions”).

<sup>4</sup> *Public Notice* at 2.

<sup>5</sup> *Id.*

March of 2020, students and schools transitioned to remote learning.<sup>6</sup> According to SHLB, when quarantining began, 124,000 U.S. public and private schools ceased providing in-school education to 55.1 million students.<sup>7</sup> The prevalence of remote learning has continued into the 2020-2021 school year.<sup>8</sup> SHLB states that only 24 percent of school districts returned to in-person instruction full-time.<sup>9</sup> Nearly half of all school districts (49 percent) relied on remote learning, while 27 percent began with hybrid instruction.<sup>10</sup> Among the 100 largest school districts, 74 percent chose to begin the 2021 school year relying entirely on remote learning for their more than 9 million students.<sup>11</sup>

A significant portion of the K-12 population does not have access to sufficient broadband in their homes. Common Sense Media found that an estimated 15 to 16 million K-12 public school students lack either sufficient broadband access or the devices needed to adequately participate in remote learning.<sup>12</sup> It is estimated that 15% of school age children do not have a high-speed internet connection at home.<sup>13</sup> Those students that do not have access to sufficient broadband are rapidly falling behind.<sup>14</sup>

---

<sup>6</sup> SHLB Petition at 1.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> “School Districts’ Reopening Plans: A Snapshot,” *Education Week* (updated Sept. 23, 2020), available at <https://www.edweek.org/ew/section/multimedia/school-districts-reopening-plans-a-snapshot.html>.

<sup>12</sup> Common Sense Media, “The Homework Gap: Teacher Perspectives on Closing the Digital Divide,” available at [https://www.common Sense Media.org/sites/default/files/uploads/kids\\_action/homework-gap-report-2019.pdf](https://www.common Sense Media.org/sites/default/files/uploads/kids_action/homework-gap-report-2019.pdf).

<sup>13</sup> Monica Anderson and Andrew Perrin, *Nearly One-in-Five Teens Can’t Always Finish Their Homework Because of the Digital Divide*, PEW RESEARCH CENTER (Oct. 26, 2018) available at <https://www.pewresearch.org/fact-tank/2018/10/26/nearly-one-in-five-teens-cant-always-finish-their-homework-because-of-the-digital-divide/>.

<sup>14</sup> Teaching During Covid, *supra*.

In WISPA's view, support for off-campus learning during the pandemic should be permitted, with specific conditions tailored to ensure that support does not supplant private investment or discourage market entry by commercial broadband providers.<sup>15</sup> Support should be tied directly to the needs of students struggling to learn remotely during the pandemic. To this end, support should be directed at K-12 students within the footprint of a school or school district and should be limited to serving its essential purpose – education. Support also should be available to all technologies, including and especially fixed wireless that can be quickly and cost-effectively deployed, to allow for flexibility based on the schools' specific remote learning needs. WISPA agrees with SHLB that the Commission should open a new filing window to allow for schools to purchase broadband to support off-campus use. Finally, to balance the need for remote learning support with the principles of the E-Rate program, WISPA cautions that any distributed support must be subject to review to prevent fraud, waste, and abuse, and the Commission must have the ability to order reimbursement of mis-used funds.

#### **I. SUPPORT FOR OFF-CAMPUS LEARNING SHOULD BE PROVIDER- AND TECHNOLOGY-NEUTRAL**

E-rate funding to support remote learning off-campus should not be used to supplement, undermine or discourage private investment by Internet service providers. A central tenet of the E-Rate program has been its requirement of competitively neutral treatment of service providers and technology, as long as the funded services are cost effective and included on the Eligible

---

<sup>15</sup> See *Schools and Libraries Universal Service Support Mechanism, Connect America Fund, Modernizing the E-rate Program for Schools and Libraries*, Comments of the Wireless Internet Service Providers Association, CC Docket No. 02-6, WC Docket No. 10-90, WC Docket No. 13-184 (Nov. 3, 2016); *Schools and Libraries Universal Service Support Mechanism, Connect America Fund, Modernizing the E-rate Program for Schools and Libraries*, Reply Comments of the Wireless Internet Service Providers Association, CC Docket No. 02-6, WC Docket No. 10-90, WC Docket No. 13-184 (Dec. 5, 2016).

Services List.<sup>16</sup> Funding to support off-campus learning should likewise be technology- and provider-neutral. As SHLB states, “connectivity can take many forms: examples include (1) a cable or telephone company connection to a student or teacher home; (2) personal hotspots with mobile data connections; (3) school or library Wi-Fi networks; (4) school bus or other Wi-Fi hotspots in targeted locations; or (5) a fixed wireless private LTE solution where the district’s network connects directly to student and teacher homes.”<sup>17</sup>

## **II. SUPPORT FOR OFF-CAMPUS LEARNING SHOULD BE LIMITED TO HOUSEHOLDS WITH K-12 CHILDREN LEARNING REMOTELY THAT DO NOT HAVE ADEQUATE BROADBAND SERVICE**

SHLB asks the Commission to declare that E-Rate funds may be used for off-campus equipment and services for the “limited purpose” of supporting remote learning during the pandemic.<sup>18</sup> WISPA supports the use of E-Rate funds for this limited purpose and encourages the Commission to clarify that support should be limited to funding remote learning for K-12 students that do not have access to adequate broadband service. Further, the Commission should clarify that households within the school district otherwise receiving broadband services, including households receiving discounted broadband through the Lifeline Program or the Emergency Broadband Benefit Program, would not qualify as households eligible for off-campus remote learning support. By definition, these households already have access to broadband service and there is no reason to permit double-dipping by also allowing these households to obtain an additional connection through the emergency E-rate relief. It would be inconsistent

---

<sup>16</sup> See 47 USC § 254(h)(2)(A) (requiring the Commission’s E-rate rules to be competitively neutral); Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801, ¶ 46 (1997) (the E-rate program and its rules should “neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another”) (subsequent history omitted) (“*First Report and Order*”).

<sup>17</sup> WISPA Comments at 9.

<sup>18</sup> See SHLB Petition at 8.

with the E-Rate program objectives, and the narrow relief sought in the Petitions, to permit E-Rate funds to be used to compete with existing providers that have invested their own capital to deploy commercial broadband.<sup>19</sup>

However, distinct from broadband *service*, WISPA supports waiving the eligible services rule for Funding Years 2020 and 2021 to allow E-rate support for “*connected devices*” such as modems, routers, and fixed or mobile wireless towers that would otherwise not be eligible for E-rate support to the extent such devices are used for remote learning purposes and subject to the limitations described herein.

Support for off-campus locations should also not extend beyond the limits of the requesting school district.<sup>20</sup> Remote learning during the pandemic is conducted as an extension of the physical school classroom, bringing learning that would otherwise occur in the school building directly into the home. Accordingly, E-Rate support for remote learning should be limited to those K-12 students that would otherwise be learning in the school building and should be tied directly to supporting students associated with the individual school or district.

### **III. OFF-CAMPUS INTERNET ACCESS SHOULD BE LIMITED TO USAGE SERVING AN EDUCATIONAL PURPOSE**

By statute, the E-Rate program is limited to services provided to schools and libraries for educational purposes.<sup>21</sup> During the pandemic when students are attending schools remotely, their residences are their classroom. Moving broadband from supporting classroom instruction to supporting at-home instruction should not diminish or act as an end run around the requirement that E-Rate support be used for an educational purpose. As such, and consistent

---

<sup>19</sup> See 47 USC § 254(h)(2)(A); *First Report and Order*, 12 FCC Rcd at 8801, ¶ 46.

<sup>20</sup> For private schools, the local school district where the private school is located would serve as the proxy.

<sup>21</sup> See 47 U.S.C. § 254(h)(1)(B).

with E-Rate funding rules, support for remote learning should be: (1) limited to only registered students and staff, either through specific credentialing or through the use of registered devices,<sup>22</sup> (2) subject to CIPA compliance, and (3) subject to certification from the school that the connectivity is directly related to an educational purpose.

WISPA also recommends that E-Rate supported off-campus broadband services be limited to those times when students are likely to be receiving remote instruction. WISPA points to the Commission's standards for Core Programming, which identify the hours of 6:00 a.m. to 10:00 p.m. as times when children ages 16 and under generally watch television programming or view video content as an example of a timeframe that may be sufficient for these purposes.<sup>23</sup>

#### **IV. THE COMMISSION SHOULD OPEN A SEPARATE APPLICATION WINDOW FOR REMOTE LEARNING SERVICES**

WISPA agrees with SHLB that the Commission should direct USAC to open a separate filing window for remote learning E-Rate funding requests.<sup>24</sup> To the extent that schools have been cost-allocating broadband connectivity to reach students, they should be permitted to have those services covered by E-Rate. If school districts used non-E-Rate funds to deliver remote instruction, they should also be permitted to seek E-Rate funds to cover those costs. Remote instruction, as a result of the pandemic, began for most schools in March 2020, is on-going, and is likely to continue throughout the remainder of this school year and may extend into the fall. Remote learning support should be tied to a school's need for continued remote learning due to the pandemic, not as a substitute for commercial broadband that may be available. Accordingly, WISPA agrees with SHLB that the separate funding window should allow schools to request

---

<sup>22</sup> See Nevada Petition at 2-3.

<sup>23</sup> See *Children's Television Programming Rules; Modernization of Media Regulation Initiative*, Report and Order and Notice of Proposed Rulemaking, 34 FCC Rcd 5822, 5837 at ¶ 22 (2019).

<sup>24</sup> See SHLB Petition at 15.

funding either for new broadband services supporting remote learning or for services that were previously cost-allocated.

WISPA strongly disagrees with Colorado and SHLB recommendations that the Commission suspend the E-Rate competitive bidding process.<sup>25</sup> The competitive bidding rules for E-Rate are the cornerstone of the program.<sup>26</sup> The rules “ensure that applicants are informed of all the options available to them whenever they seek a new service contract, ensure that service providers have sufficient information to submit a responsive proposal, generate the most efficient pricing for eligible services, and guard against waste, fraud, and abuse.”<sup>27</sup> There is no need or justification for eliminating the competitive bidding requirement during this emergency. The Commission should, as it recently has done, open a short new window for issuing Form 470s and accepting Form 471.<sup>28</sup> With a limited new window, the Commission can both ensure rapid needed relief and still enforce its competitive bidding rules.

## **V. E-RATE SUPPORT FOR REMOTE LEARNING SHOULD BE SUBJECT TO AUDIT**

The pandemic has created an educational emergency that must be dealt with swiftly and decisively if students are to be able to receive the necessary instructions. With many emergencies, it may become necessary to focus on expediency over accuracy at the time funds are allocated. That being said, waste, fraud, and abuse can never be tolerated. While there may be some unintentional mistakes during this process, there may also be those that seek to game the

---

<sup>25</sup> Colorado Petition at 4-5; SHLB Petition at 13

<sup>26</sup> See, e.g., *Schools and Libraries Universal Service Support Mechanism*, Order, 32 FCC Rcd 9538 at ¶14 (2017) (adopting, on an emergency basis, temporary rules to provide immediate relief to schools and libraries affected by Hurricanes Harvey, Irma, and Maria and retaining the competitive bidding rules).

<sup>27</sup> *Id.*

<sup>28</sup> *Schools and Libraries Universal Service Support Mechanism*, Order, 35 FCC Rcd 10347 (2020) (opening second E-rate application window for funding year 2020 to address increased on-campus bandwidth needs).



system for private gain in violation of the rules. Accordingly, any funds disbursed during this emergency must be subject to audit, and where the rules have been violated, the funds must be subject to disgorgement.

## **VI. THE BUREAU HAS AUTHORITY TO GRANT THE PETITIONS**

WISPA agrees with SHLB's conclusion that the requested relief can be granted by a Declaratory Ruling issued by the Wireline Competition Bureau ("Bureau"). At their essence, the Petitions seek a ruling to: (1) open a new filing window; (2) suspend the cost allocation requirement; and (3) clarify that remote learning during the pandemic has moved the on-campus classroom, off-campus to the home. Sections 0.91 (a)(b), (h), and (l) of the Commission's Rules provide the Bureau with the authority to develop policy goals and programs that meet the present needs of the Nation; act on requests for interpretation or waiver of the rules, review deployment of telecommunications capability and encourage such deployment; and review programs affecting wireline telecommunications to ensure consistency with overall Commission policy.<sup>29</sup> Section 0.291 of the Commission's rules permits the Bureau to act on delegated authority to perform all functions of the Bureau described in Section 0.91 except that the Bureau does not have authority to act on an application or request which presents novel questions.<sup>30</sup>

The questions presented by the Petitions are far from novel. The Commission and Bureau have issued a plethora of decisions on these questions and sought comment on similar issues in a Public Notice issued in 2016 addressing off-campus use, in response to which WISPA submitted comments and reply comments.<sup>31</sup> The pandemic has created an emergency in the

---

<sup>29</sup> 47 C.F.R. §0.91(a)(b), (h) and (l).

<sup>30</sup> 47 C.F.R. §0.291; 47 C.F.R. §0.91.

<sup>31</sup> See *Public Notice*, "Wireline Bureau Seeks Comment on Petitions Regarding Off-Campus Use of Existing E-rate Supported Connectivity," DA 16-1051 (rel. Sept. 19, 2016).

American education system which needs to be addressed with great alacrity. A Declaratory Ruling issued by the Bureau is the proper mechanism to address this emergency. WISPA notes, however, that the Commission would be required to conduct a rulemaking proceeding to make the suspension of the cost-allocation requirement permanent.

### **Conclusion**

The Bureau should conditionally grant the relief requested in the Petitions to the extent described above.

Respectfully submitted,

**WIRELESS INTERNET SERVICE  
PROVIDERS ASSOCIATION**

February 16, 2021

By: /s/ Louis Peraertz  
Louis Peraertz, Vice President of Policy  
4417 13<sup>th</sup> Street #317  
Saint Cloud, Florida 34769